UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/5/Add.28
19 September 1991

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

BULGARIA

[12 September 1991]

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GE.91-13777/3893B

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I. INFORMATION OF A GENERAL NATURE

1. The Republic of Bulgaria attaches particular importance to international cooperation to foster and to encourage activities by States to promote respect for human rights and fundamental freedoms. Since 10 November 1989, this position has been greatly strengthened and effectively applied.

2. It is well known that our country took part in drafting the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed it on 10 June 1986 and deposited the instruments of ratification with the Secretary-General of the United Nations on 16 December 1986.

3. Chapter three (arts. 34-65), which is the most important section of the Constitution of the Republic of Bulgaria sets out the fundamental rights and obligations of the individual. These rights and obligations are subsequently developed at greater length and guaranteed in a number of legal provisions. Three enactments have been decisive in the immediate prohibition, prevention and restriction of torture and other forms of cruel, inhuman or degrading treatment or punishment, namely, the 1968 Penal Code (Official Journal No. 26/68), the 1974 Code of Criminal Procedure (Official Journal No. 89/1974), and the 1969 Penalties Enforcement Act (Official Journal No. 30/1969).

4. Other vitally important enactments are the Juveniles Antisocial Behaviour Act (Official Journal No. 13/1958), the Administrative Offences and Penalties Act (Official Journal No. 92/1969), the Public Prosecutions Act (Official Journal No. 87 of 1980), the National Militia Act (Official Journal No. 89 of 1975), the Public Health Act (Official Journal No. 88 of 1973), and the Aliens Residence Act (Official Journal No. 93 of 1972).

5. Apart from the Convention against Torture, our country has signed no other international code or document dealing directly and exclusively with torture and other forms of cruel, inhuman or degrading treatment or punishment. However, it has signed and ratified virtually all the multilateral conventions on the various aspects of human rights and fundamental freedoms, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966).

6. The 1949 Geneva Conventions and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) which were signed and ratified by the Republic of Bulgaria, are of vital importance for international peace and security, as well as for national legislation.

7. Other international conventions to combat certain specific and dangerous forms of international crime that lead to cruel, inhuman or degrading treatment or punishment of the individual, or crimes committed on a large scale, should also be mentioned, such as the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the

International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). Again, one should not underestimate the considerable importance and topicality of the fight against certain international crimes which take the lives of innocent people and are penalized under the Geneva Convention on the High Seas (1958), the Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971).

8. In the effort to combat violations and similar acts, our country has ratified the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), and the International Convention against the Taking of Hostages (1979).

9. The Republic of Bulgaria has signed and ratified many bilateral agreements for mutual legal assistance in civil, criminal and family matters as well as consular conventions which afford certain legal guarantees against prosecution and inhuman or humiliating treatment or punishment.

10. The bilateral consular conventions to which the Republic of Bulgaria is a party contain specific elements on the legal consequences of the immunity clause. The personnel of consular offices, consular agents, as well as members of their families are inviolable. The host country is obliged to show them due respect and to take all necessary measures to prevent any harm to their person or any violation of their freedom and dignity.

11. Our country is also a party to the Convention whereby persons sentenced to imprisonment shall be transferred to the State of which they are nationals in order to serve their sentence. This Convention was signed by some East European countries in Berlin on 19 May 1978 (Official Journal No. 9 of 1 February 1980). Under article 1 of this Convention, citizens of any of the signatory States who are sentenced to serve a prison term in another State shall be transferred, by agreement between these States, to serve their sentence in the State of which they are nationals. In conformity with the provisions of the Convention, our legislation has established a special procedure which is set forth in articles 442-449 of the Code of Criminal Procedure.

12. Our legislation has no special law or enactment which directly and exclusively regulates all aspects of protection against torture and other cruel, inhuman or degrading treatment or punishment. Here, some preliminary comments are in order. Fisrt and foremost, the foundations of current penal policy and criminal law, referred to in the Constitution and the Penal Code, are the principles of legality, democratization, humanism, justice and international cooperation, in keeping with the realities of the world today and the new trend towards pluralism in political life.

13. The purpose of imposing a penalty is not to cause physical suffering or humiliation (Penal Code, art. 36, para. 2). The same applies to the way in which the sentence is served (Penalties Enforcement Act, art. 2, para. 2).

14. Imprisonment has been limited in scope, liberalized in terms of content and made more democratic as far as serving the sentence is concerned. Under the same system of sanctions, penalties that do not include imprisonment are more common. There are 10 types (Penal Code, art. 37, para. 2).

15. Many general or specific offences, whether or not aggravated, involving torture or other forms of cruel, inhuman or humiliating punishment, are enumerated in the Penal Cde. Harsh penalties are prescribed, especially for officials of the system of justice.

16. The penitentiary system for serving penalties for criminal offences is based on traditional principles and on new, highly democratic principles. Various procedural limits are also laid down in respect of their actual execution. They are also covered by the country's basic law, the Constitution, and by the Code of Criminal Procedure. Great importance is attached to the special rules on minors (Penal Code, arts. 60-65, and the Code of Criminal Procedure, arts. 377-378).

17. The complex and sensitive task of enforcing the penalties imposed by the courts, for the sentences currently prescribed, is regulated by the 1969 Penalties Enforcement Act. This law is in fact a code which governs all imprisonment and is in conformity with existing international standards of the Penalties Enforcement Act (art. 2, para. 2). This matter was previously governed by a set of regulations.

18. In April 1990, the prison system was removed from the portfolio of the Ministry of the Interior and placed under the Ministry of Justice. New regulations to the Penalties Enforcement Act were also adopted, containing new provisions which meet international standards, above all the European rules governing the treatment of prisoners.

19. This has opened the penal establishments to public organizations and the mass media and led to the necessary legal guarantees for a public check on such establishments.

20. The Administrative Offences and Penalties Act (Official Journal No. 92 of 28 November 1969) lays down the general rules governing administrative offences, the application and execution of administrative penalties and also specifies the requisite guarantees for the protection of their rights and legitimate interests of individuals and organizations.

21. The Act prescribes three types of administrative penalty: public reprimand, a fine and temporary suspension of the exercise of a given profession or activity (art. 13). Binding administrative measures, set forth in a law or decree, may also be imposed (arts. 22 and 23).

22. Compulsory medical measures for persons who are not legally responsible or who are mentally deficient and require hospital care or compulsory medical treatment are also specified in chapter 11 (arts. 89-92) of the general part of the Penal Code and in article 36, paragraph 3, of the Public Health Act (Official Journal No. 88 of 1973). The latter also contains measures to combat alcoholism, drug abuse and the excessive consumption of tobacco (arts. 54-68).

23. Special importance is attached to observance and implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the organizations responsible for the protection of law and order and the internal security of the State. In the Republic of Bulgaria their activity is based on the Constitution and is regulated in detail by the People's Militia Act (Official Journal No. 89 of 9 September 1976).

24. The situation of aliens is regulated by the Aliens Act (Official Journal No. 93 of 28 November 1972).

25. Under the terms of the present Constitution, Parliament alone may decide whether a law contravenes the Constitution and whether the conditions set out in the Constitution for enactment of the law are being respected (arts. 66 and 85).

26. International agreements are concluded by the Council of Ministers (the Government), which is the executive and the State's supreme organizational body (Constitution art. 98 and art. 102, para.9).

27. The constitutional principle of strict and express respect for the law is also reflected in the regulations concerning torture. Under article 136, paragraph 1, of the Constitution, crimes and the relevant penalties shall be specified exclusively by the law. In our country, it is impossible other than by virtue of the law, to declare any act a crime and to prescribe a penalty on the basis of another enactment, even an international convention or agreement. Consequently, immediately after the ratification of any international law-making instrument to which the Republic of Bulgaria is a party and whose provisions include characterizations of specific crimes and the relevant penalties, the requisite changes are made in the Penal Code (for example, in implementation of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 (Official Journal No. 95 of 1975). Furthermore, certain legal and penal provisions were already in force, under the terms of the Bulgarian Penal Code before they were included in an international convention (for example, the Decree-Law on the Judgement of Persons Guilty of involving Bulgaria in War against the Allied Nations, and the Consequent Crimes, published in Official Journal No. 219 of 1944).

28. Article 48, paragraph 1 of the Constitution, guarantees the liberty and inviolability of the individual. This is done by legislation, primarily the Penal Code, the Code of Criminal Procedure, the Penalties Enforcement Act and other laws and codes. Criminal investigation, the detection and sentencing of criminals may be done only through the authorities, in accordance with the system and the methods specified in the Code of Criminal Procedure. Procedures are established first and foremost on the basis of democratic and humanitarian principles, which are set forth in the Constitution and the Code of Criminal Procedure.

29. Together with the fundamental principles, many general provisions constituting basic procedural guarantees for practical implementation are laid down by law.

30. Consequently, in criminal proceedings, sentence can be delivered only by the courts specified in the Constitution of the Republic of Bulgaria. Special courts to try criminal cases are inadmissible (Code of Criminal Procedure, art. 6).

31. Under article 33 of the Constitution, the Department of Public Prosecutions ensures that the laws are strictly observed and protects the rights and legitimate interests of the citizens. The Department plans and wages the struggle against crimes and other offences, takes measures to prevent them and prosecutes persons who have committed crimes. The Department also takes steps to nullify unlawful acts and to restore rights that have been violated. It ensures that sentences and decisions are enforced and monitors the way in which penalties and other compulsory measures are carried out in places of detention (Code of Criminal Procedure art. 375 and Department of Public Prosecutions Act, art. 3).

32. Preliminary enquiries are conducted by the examining magistrates of the Ministry of the Interior or of the Military Prosecutor's Office (Code of Criminal Procedure, art. 196), under the direction and the supervision of the Prosecutor (Code of Criminal Procedure, art. 48).

33. A term of imprisonment may be served at one of 13 prisons or two centres for juveniles. Regimes in the prison system total 17 - two closed, six semi-open and eight open, and the closed type in juvenile centres (Penalties Enforcement Act, art. 3). As at 1 May 1991, there were 5,932 persons serving prison sentences and 1,444 persons under police custody. Successive amnesties and reductions of penalties (there were 3,686 convicted persons in 1989 and 9,920 in 1990), have now cut the number of prisoners by more than half.

34. The committees at the central, department and local government levels, the People's Councils' child education offices, the schools which come under the Ministry of Education and the People's Councils' homes temporarily housing children and juveniles (Juveniles Antisocial Behaviour Act, art. 2) are the institutions which deal specifically with antisocial acts by juveniles.

35. It should also be mentioned that all judgements made in criminal proceedings by criminal administration bodies are subject to judicial review. Appeals lie with the regional court of the jurisdiction in which the offence was committed or, in the case of offences committed abroad, the People's Court in Sofia (Administrative Offences and Penalties Act, art. 59).

36. Medical measures of constraint are enforced by the courts (Code of Criminal Procedure, art. 430), and the necessary submission is made by the appropriate public prosecutor (Code of Criminal Procedure, art. 46).

37. Two types of judicial protection are available to persons who claim to have suffered torture or other inhuman, cruel or degrading treatment or punishment: substantive and procedural legal means. Substantive legal means signify that the persons in question have been the victims of a crime and are entitled to criminal and legal protection. The crimes in question are usually crimes of a general nature.

38. Procedural legal means concern effective judicial protection for victims of torture or of other inhuman treatment. Strict and constant observance of the provisions of the Constitution relating to the freedom and inviolability of the individual is guaranteed by procedural legislation. Attention should be drawn to the special importance of review, which is ensured by the monitoring and revision of criminal and administrative trials provided for in the Code of Criminal Procedure and in the Administrative Offences and Penalties Act.

39. Under article 15, paragraph 1, of the Code of Criminal Procedure, "measures of constraint may not be employed against individuals who are parties to criminal proceedings except in the circumstances and under the terms laid down by this Code". Constant and strict monitoring guarantees this provision. Article 48, paragraph 2 of the Constitution stipulates that no one may be detained for more than 24 hours without the authorization of the court or of the public prosecutor. The court and bodies concerned with pre-trial proceedings are required to release any citizen who has been unlawfully deprived of his freedom (Code of Criminal Procedure, art. 15, para. 3). Moreover, article 152 and articles 202-205 of the Code describe in detail the conditions of detention, the authorities competent and the periods of detention.

40. As far as legal protection of detainees is concerned, particular importance is attached to judicial monitoring and monitoring by the Department of Public Prosecutions to ensure that sentences are enforced in compliance with the law. Under article 5 of the Penalties Enforcement Act, courts are entitled to be kept informed about the enforcement of sentences and to make proposals for improvements. Bodies responsible for the enforcement of sentences are required fully to assist magistrates during the enforcement of sentences, to provide them with all the necessary material, files and information requested and to guarantee them free access to prisons, juvenile centres and to allow them to meet persons deprived of their liberty.

41. The administration of places of detention is required:

(a) To guarantee the public prosecutor free access at any time to prisons and juvenile centres, and to allow them to meet in private the persons deprived of their liberty;

(b) To comply with orders relating to observance of the regulations laid down for the enforcement of the sentence (Enforcement of Penalties Act, art. 4, para. 4).

42. As far as the offences covered by the Convention against Torture are concerned, victims may request the competent bodies to intercede in order to put an end to the acts and to restore their rights. Article 34 of the Enforcement of Penalties Act guarantees the right of persons deprived of their liberty to submit complaints and requests to the highest State authorities, to the Ministry of Justice and to the Department of Public Prosecutions, in sealed envelopes, without submitting them to the prison administration.

43. Under article 56 of the Constitution, the State is held liable for harm caused by unlawful administrative acts or by violations committed by its agencies and officials. This question is governed by the State Liability for Harm to Citizens Act, which has been in force since 1 January 1989 (Official Journal No. 60, of 5 August 1988).

44. In keeping with the principles of penal policy and criminal law, Bulgaria's legal system does not allow physical torture or other cruel treatment. Article 37 of the Penal Code provides for two basic types of sentence: imprisonment and non-custodial sentences.

45. In practice, priority is given to non-custodial sentences and suspended sentences. In recent years there has been a rise in the number of custodial sentences and this has gone hand in hand with a rise in the number of suspended sentences for persons liable to custodial sentences of up to three years. During 1976-1980, custodial sentences were handed down for general crimes in 68.3 per cent of cases and suspended sentences in 32.5 per cent; the respective figures for 1981-1985 were 74.2 per cent and 34.9 per cent. Suspended sentences were handed down in 36.9 per cent of cases in 1986, 39.4 per cent in 1987 and 43.4 per cent in 1989.

46. The courts regularly hand down custodial sentences that are short. In 1987, 42.5 per cent of persons found guilty received a custodial sentence of up to one year, 21.4 per cent a sentence of one to three years, 3.5 per cent a sentence of three to five years, 1.7 per cent a sentence of five to 10 years, 0.4 per cent a sentence of 10 to 15 years and 0.3 per cent a sentence of 10 and 15 years; no sentence of more than 20 years was handed down.

46 bis. In the implemention of the Convention against Torture in Bulgaria, judicial error, a lack of sufficient professional training, limited professionalism and the absence of a keen sense of legal duty and responsibility were not alien to actual judicial practice. Instances in which bribes were paid to administrative officials, lawyers, examining magistrates, public prosecutors, and even to judges were reported in the mass media. They were sometimes discovered in time and punished in accordance with the law.

47. Under article 59 of the Courts Membership Act (Official Journal No.23 of 19 March 1976), the Supreme Court of the Republic of Bulgaria, sitting in full session, adopts interpretative orders which are binding on particular courts and jurisdictions, as well as on administrative bodies, whose acts are subject to judicial control. In Directive No. 1, dated 18 December 1986, the Supreme Court of the Republic of Bulgaria, in full session, found that prosecution and punishment "to protect the rights and legitimate interests of individuals and socialist organizations is not always sufficiently effective". Accordingly, the Supreme Court has ordered the courts to convict

persons guilty of any breach of the law, regardless of their position and social status. It is necessary to "combat uncompromisingly any mediation and interference, regardless of source, when judgements are handed down in specific civil or criminal trials, so that such steps will not be tolerated".

48. In practice the democratic and humanitarian principles and provisions established by law were not always fully or properly implemented by the legal system. In the Republic of Bulgaria, as in the other Eastern European countries, there was virtually a one-party system. The Bulgarian Agrarian Party did exist, but it followed the programme and leadership of the Bulgarian Communist Party.

49. After 10 November 1989, radical changes occurred in the legal and political system, in particular the following:

The abolition of the leading role of the Bulgarian Communist Party (Constitution, art. 1, para. 2);

The establishment of a multi-party political system and modifications and amendments to the Constitution following the so-called "round table" negotiations;

The free and democratic election of Parliament - the Grand National Assembly (on 10 and 17 June 1990);

The election of the President of the Republic (Dr. Zh. Zhelev) of the opposition UFD party;

The formation of a Government of national unity, headed by an unaffiliated Prime Minister (D. Popov - President of the Municipal Court of Sofia and including representatives of the opposition (end of 1990));

The depoliticization of the various organs of the Ministry of Defence, the Ministry of the Interior, the Courts, the Department of Public Prosecutions and the Ministry of Foreign Affairs.

50. These were followed by particularly significant changes and amendments to criminal law, in particular:

The abrogation of article 273 of the Penal Code, on spreading unfounded allegations (Official Journal No. 91, November 1989);

The decriminalization of all forms of campaign and propaganda against the State and the abrogation of other provisions relating to activities preceding or subsequent to the crime - receiving and concealing, denunciation, threats (Official Journal No. 99 of 22 December 1989);

The Amnesty Act in respect of the above and other crimes (in the same Official Journal);

The democratic changes and amendments to the Code of Criminal Procedure (Official Journal No. 31, April 1990);

The modifications and amendments to the Penal Code and to the Amnesty Act and the return of nationalized property (Official Journal No. 1, of 1 January 1990).

51. In the Bulgarian Penal Code, provision for the death penalty is included as a temporary measure and it is applied exclusively to the most serious crimes that threaten the foundation of the Republic, as well as to other particularly dangerous and premeditated crimes (37 provisions in specific chapters of the Penal Code). Restrictions apply to a whole range of cases. The death penalty was not carried out until the Council of State had taken a decision on the possibility of an alternative sentence. The death sentence may not be carried out, nor may an alternative sentence be enforced against a person transferred under such a condition by another State (Penal Code art. 37, para. 2, and art. 38).

52. However, in the Republic of Bulgaria, the death penalty was widely applied in practice. As a percentage of its population, Bulgaria had the highest number of executions in Europe. From 1985 to 1989 the numbers of executions were as follows: 45, 34, 21, 27 and 14.

53. After 10 November 1989 no death sentences were approved by the President of the Council of State, later to become the President of the Republic, Mr. P. Mladenov. By a decision taken by the Grand National Assembly on 20 July 1990, a moratorium on executions was declared for an indefinite period (Official Journal No. 60 of 27 July 1990).

PART II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

54. There is no distinct definition of the concept of "torture" or of the general concept of "other cruel, inhuman or degrading treatment or punishment" in Bulgarian law or, in particular, in the Penal Code. Under article 75, paragraph 2, of the 1879 Tirnovo Constitution, "torture, regardless of the charges brought ... is prohibited". The current Constitution contains no such provision. However, the draft of the new constitution introduces the right of individuals not to be tortured or subjected to other forms of cruel, inhuman or degrading treatment or punishment.

55. Pursuant to the Convention, the Republic of Bulgaria has adopted, especially since 10 November 1989, a series of measures to prevent torture: the changes and amendments made to the Penal Code, to the Code of Criminal Procedure and to the Penalties Enforcement Act. At the same time as a number of politically motivated crimes were decriminalized, a number of amnesties and successive pardons were granted. From the moment a person is charged, his right to a defence (lawyer) is guaranteed. The necessary administrative measures are taken to ensure in practice that torture or any other form of cruel, inhuman or degrading treatment or punishment is not used.

56. Several leading figures or persons responsible for pre-trial proceedings, as well as officials from the Department of Public Prosecution and the courts who had been involved in such acts or who had infringed the law by violating the rights and legitimate interests of individuals were dismissed. The bodies responsible for pre-trial proceedings are shortly to be detached from the Ministry of the Interior and to acquire separate status.

57. The amendments made to the Code of Criminal Procedure since 1990 allow all convicted persons to apply for a review of their trial through the judicial review channels, independently from earlier reviews.

58. In recent years there have been no cases of torture attributable to exceptional circumstances or to other states of emergency. However, in Bulgaria's distant past such excesses did occur. In the 1960s, individuals convicted of serious crimes were sent to the special camps set up at Belene, Lovech and Scravena, together with other persons sent there without trial for political reasons. As a result of the harsh living conditions and the subjection to systematic physical and psychological violence, 147 persons died in the camp near Lovech alone, 13 of them as a result of premeditated crimes instigated by the camp administrators and carried out by criminals detained there. The Act extending prescription for criminal prosecution from 20 to 35 years for "the murder of two or more persons" was adopted in 1990. However, pursuant to the Penal Code, article 2, paragraph 2, the less favourable law does not act retroactively.

59. Under article 16 of the Penal Code, the only type of act not liable to punishment is an act carried out in compliance with an unlawful administrative

order, transmitted through the regular channels, provided it is not obvious to the person complying with the order that it involves a criminal act. Accordingly, an order from a superior or a public authority may not be invoked to justify torture.

Article 3

60. Articles 435 to 441 of the Code of Criminal Procedure, relating to the transfer of persons who have committed a crime, do not explicitly prohibit expulsion, return (refoulement) or the extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 65 of the Constitution establishes the right of asylum for foreigners who are persecuted for their involvement in the struggle for national liberation, for their progressive political, scientific or artistic activities, or for combating racial discrimination or on behalf of peace.

61. In practice there had already been cases of non-extradition or non-transfer of persons who had committed crimes in regard to civil aviation ("unlawful seizure of aircraft"). The persons in question were Turkish citizens who had hijacked Turkish airliners and forced them to land on Bulgarian territory. The extradition was also refused on the grounds referred to in article 3, paragraph 2, of the Convention.

Article 4

62. The provision which comes closest to the definition of "torture" provided in the Convention is contained in article 287 of the Penal Code. It concerns crimes against justice, namely, and official body or agent acting either alone or through the intermediary of another person, and in the performance of his duties, uses coercive and unlawful means to obtain a confession, testimony or conclusion from the accused, from a witness or an expert. Clearly, this provision is restricted in terms of application and of scope.

63. The provisions of article 142 of the Penal Code, whereby unlawfully depriving a person of his liberty is classified as an offence, are also highly important. The act is classified as an offence if it is committed by an official in the course of his duties and carries a custodial sentence of one to five years and if it is carried out in a manner that causes pain or which jeopardizes the health of the victim. Article 187 of the Penal Code deals with torture or specific ill-treatment of a child or minor who is under guardianship or is being brought up by the person who commits the act.

64. As to crimes against peace and against mankind, referred to in chapter 14 of the special section of the Penal Code (arts. 407-419), a number of particularly dangerous types of torture or inhuman treatment are also covered.

65. The other forms of cruel, inhuman or degrading treatment are covered by conventional, universal crimes when committed by an official in the course of his duties or by an official body. However, they are not specifically in conformity with the Convention.

66. The penalty for the crime referred to in article 287 of the Penal Code is a custodial sentence of up to 10 years. Provision is also made for harsher sentences if the torture has caused serious physical injury or death (Penal Code, arts. 116 and 131). In such cases the penalty is a maximum of 20 years' imprisonment, and the death penalty applies to the most dangerous crimes. Attempted torture and complicity also carry sentences.

Article 5

67. In accordance with the principle of territoriality, the Penal Code applies to all crimes committed on the territory of the Republic of Bulgaria (Penal Code, art. 3). The issue of the liability of foreigners entitled to immunity from the criminal jurisdiction of the Republic of Bulgaria is dealt with in accordance with the norms of international law which Bulgaria has adopted.

68. The Penal Code is applicable to Bulgarian citizens, on the personal or civic principle, for crimes they have committed abroad (Penal Code, art. 4). However, Bulgarian citizens are not extradited to another State for trial or punishment in that State. The Penal Code is also applicable to aliens who have committed general crimes abroad which affect the interests of the Republic of Bulgaria or those of Bulgarian citizens (real principle - Penal Code, art. 5).

69. Lastly, the Penal Code is applicable to aliens who have committed crimes abroad against peace and mankind which affect the interests of another State or those of foreign citizens. The Code is also applicable in respect of other offences perpetrated by aliens abroad, when this is provided for in an international agreement to which the Republic of Bulgaria is a party.

70. Preliminary examination proceedings are governed by the general rules of procedure applicable to all offenders. Under article 186 of the Code of Penal Procedure, a preliminary hearing is held when there is a legitimate reason and sufficient evidence to believe that a crime has been committed. This may also be done when it is imperative to proceed with investigative actions immediately.

71. The examining magistrate may order pre-trial detention, without the consent of the prosecutor, in respect of a general crime for which the statutory penalty is deprivation of liberty or more severe punishment in cases where:

(a) The person is apprehended in the process of or immediately after committing the offence;

(b) A witness identifies the person who committed the offence;

(c) Clear evidence of the offence is found on the person's body or clothing, in his direct possession or at his domicile.

72. Intent to flee from justice is presumed if the person has no fixed abode, his identity cannot be established or if there is evidence that the person is the alleged offender (Code of Criminal Procedure, art. 202).

73. The examining magistrate must inform the prosecutor of the detention and explain the circumstances leading to the detention order within 24 hours. The prosecutor must immediately confirm or reject the detention order. He may extend the period of detention to a maximum of 10 days where necessary for the purposes of the investigation. If no charge is brought within that time, the examining magistrate must arrange for the suspect to be released (Code of Criminal Procedure, art. 203).

74. The preliminary investigation must be completed and the records of the examination handed over to the prosecutor within two months at most from the date on which the pre-trial proceedings were initiated. Where the preliminary investigation has not been completed within two months, the Attorney-General may extend the period allowed to four months or, exceptionally, to six months. If an extension of more than two months is granted, the Attorney-General also decides on the measure of confinement in police custody (Code of Criminal Procedure).

Article 6

75. Implementation of the provisions in article 6 of the Convention is not governed by the Code of Criminal Procedure. Relevant clauses are incorporated in the agreements on judicial assistance in connection with criminal proceedings which the Republic of Bulgaria has signed with other States. Such measures have not so far been necessary in practice.

Article 7

76. Criminal prosecution is obligatory in respect of all crimes of a general nature (Code of Criminal Procedure, art. 171, para. 1). The competent authorities take their decision in the same manner, having regard to the type and gravity of the offence. An offence involving inhuman or degrading treatment or punishment does not always constitute "a serious crime of a general nature", since a penalty of deprivation of liberty for more than five years or capital punishment is not always stipulated for all such offences under article 93, paragraph 7, of the Penal Code.

77. The Code of Criminal Procedure and the agreements on judicial assistance in connection with criminal proceedings provide the necessary guarantees for fair treatment at all stages of such proceedings.

Article 8

78. Part 2 of chapter 22 (arts. 435-441) of the Code of Criminal Procedure establishes certain general rules on the extradition of offenders. They relate particularly to the competent authorities and to the necessary documentation. Only in urgent cases may the Minister of Justice or Attorney-General request foreign bodies to arrest a person in respect of whom a request for extradition is to be made and they must state that there is already a warrant for his arrest or a sentence in force.

79. The above provisions apply where no other provisions are incorporated in an agreement with a foreign State.

80. The offences referred to in article 4 of the Convention are not included in the agreements on judicial assistance, as the latter were signed before the entry into force of the Convention. Consequently, the general procedural rules and the relevant provisions of these agreements on judicial assistance are applied.

Article 9

81. With regard to criminal cases, the agreements on judicial assistance include explicit provisions relating to the mutual supply of information and global and multilateral assistance in connection with criminal proceedings brought in respect of all crimes of a general nature. There have not, however, been any specific cases to date.

Article 10

82. Special training and information regarding the Convention and the problems of torture have not yet been organized. There are general instructions and rules for prosecutors, examining magistrates, military defence bodies, medical personnel and penitentiary personnel. A special programme for implementation of the Convention is now being drawn up. More specifically, no preliminary medical examination is required at the time of detention. However, under article 155 of the Code of Criminal Procedure, an accused person or suspect may not be placed in a psychiatric institution for examination except on a decision of the court or the prosecutor. Time spent in such an institution is considered as being held "under surveillance".

Article 11

83. The Republic of Bulgaria has periodically carried out national and regional reviews of interrogation rules, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of detention or deprived of their liberty. These reviews were of a general nature and not directly connected with the requirements of the Convention.

84. It will be necessary for some regulatory instruments to refer to or take account of the requirements of the Convention. For example, article 87 of Regulation No. 5 of 1982 allows for the use of rubber truncheons by agencies of the Ministry of the Interior in isolated cases of insubordination or brutal violation of internal order. The wording of the text permits broad application and large-scale abuses.

Article 12

85. Prompt and impartial investigations are made into cases resulting in death or serious physical disability. Other, less dangerous forms of torture

have not been reported or, if complaints were made, the offence could not be proven owing to the closed or "secret" nature of the torture actually used. However, 50 serving officials were punished for acts of torture in 1987, as were 32 in 1988, 46 in 1989 and 26 in 1990.

86. Judicial punishment was imposed only in isolated cases and the actual sentences were not particularly heavy. In 1987, for example, Sergeant Zlati Zlatev of the Ministry of the Interior's regional directorate in Provadia maltreated a citizen while arresting him; the person suffered a cerebral haemorrhage as a result of the blows he received and later died. On appeal, the offender was given a suspended sentence of three years' deprivation of liberty and fined 5 000 leva. In 1990 Lieut. Col. G. Kostov of the Ministry of the Interior's regional directorate in Varna was given a suspended sentence of one and a half years' deprivation of liberty for the unlawful arrest of a person whom he maltreated in order to extract a confession for an alleged offence. In most cases offenders were disciplined by administrative means.

Article 13

87. The Code of Criminal Procedure affords opportunities for any victim of a crime of a general nature to complain to the competent authorities, in which case the complaint must be examined within the prescribed time-limits and in accordance with the established procedure. These provisions apply to all such offences and not specifically to torture. Measures to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given are not provided for in existing Bulgarian legislation. A proposal in this regard has already been submitted.

Article 14

88. Under the State Liability for Harm to Citizens Act (Official Journal No. 60 of 5 August 1988), this obligation arises from unlawful acts of State bodies or unlawful actions or inaction of officials serving in the State administration when the harm is caused as a result of activities connected with these functions. The State is not liable for harm caused as a result of actions or acts of officials serving in economic or public organizations, even when such harm results from the exercise of the State functions they perform.

89. The liability of the State in respect of the actions of State bodies and officials extends to the basic spheres of its activities, where unlawful actions or inaction or unlawful acts of bodies or officials are most likely to occur.

90. The Act ensures prompt protection of citizens' rights. The State incurs strict liability. It does not depend on the culpability of serving officials who by their acts, actions or inaction caused the harm. It is easy to establish, because the act terminating the earlier unlawfully constituted proceedings or annulling the unlawfully imposed administrative measures or penalties, compulsory medical treatment or medical measures of constraint as

well as the judgement of acquittal are evidence that the measures annulled were unlawful. Thus, the act of annulment or judgement of acquittal means that the injured person has an enforceable right to compensation.

91. When redress is sought for harm caused as a result of invalid administrative acts of State bodies or administrative actions or inaction of State officials, unlawfulness is established by the court during the same proceedings in which the individual's claim for compensation is considered.

92. The amount of compensation legally payable is determined by the general principles of law in the Republic of Bulgaria and covers all material or moral harm or damage incurred as a direct and immediate consequence of the injury suffered. The Act also governs cases where the State is not liable or where the compensation is reduced. Under article 5 of the State Liability Act, compensation is not payable in cases where the harm is a consquence of the explicit culpability of the injured person. Where the latter is culpable for the harm caused, the compensation is reduced in proportion to his culpability.

93. An individual seeking compensation for harm brings a law suit against the body whose act or whose officials gave rise to the harm. When the harm is caused as a result of a number of acts or by persons belonging to different bodies, the latter bear joint and several liability with respect to the individual, who may sue the liable parties together or separately.

94. Judicial proceedings to establish liability under the Act are conducted in accordance with the Code of Civil Procedure. This helps to make the proceedings clearer and more orderly as the nature of liability is determined. Unfortunately, the Act is not widely applied. Since 1989, administrative and legal procedures have been adopted to compensate victims during the period of totalitarianism.

Article 15

95. The Bulgarian Code of Criminal Procedure does not, unfortunately, provide for exceptions in cases where the statement is used against a person accused of torture as evidence that the statement was made.

Article 16

96. The concept "other forms of cruel, inhuman or degrading treatment or punishment" is not defined in the Penal Code. Some examples which may be referred to in the theory and practice of administrative law include compulsory domiciliation, deprivation of the right to reside in the capital or other major cities, various restrictions on the right to work, choice of place of work or occupation, etc.

97. In the Citizens' Property Act, a typical example is the presumption of guilt in respect of so-called non-occupational income where such income is obtained by crime. Paradoxically, article 14, paragraph 2, of the Code of

Criminal Procedure calls for the presumption of innocence. Thus, both presumption of guilt and presumption of innocence are valid in respect of acts which constitute offences. Everything depends on the point of departure - the Citizens' Property Act or the Code of Criminal Procedure. Fortunately, most of these enactments made in the legal system during the period of totalitarianism have been abolished since 1989.

CONCLUSION

98. In conclusion, it should be pointed out that the process of complete renewal of legislation is fully under way. The new Constitution is currently being adopted and the adoption of the Penal Code, Code of Criminal Procedure and Penalties Enforcement Act is imminent. These instruments will take into account all the requirements of the Convention.

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/5/Add.29
26 December 1991

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

LUXEMBOURG

[15 October 1991]

I. INFORMATION OF A GENERAL NATURE

1. The prohibition and elimination of torture and other cruel, inhuman or degrading treatment or punishment, guaranteed under the Convention, are ensured in the Grand Duchy of Luxembourg by the following instruments:

- The United Nations Convention, approved by an Act of 31 July 1987;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (art. 3), approved by an Act of 22 June 1988;
- The Universal Declaration of Human Rights (art. 5);
- The International Covenant on Civil and Political Rights (art. 7), approved by an Act of 3 June 1983;

- The European Convention for the Protection of Human Rights and Fundamental Freedoms and, in particular, its articles 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" and 4, paragraphs 1: "No one shall be held in slavery or servitude" and 2: "No one shall be required to perform forced or compulsory labour". This Convention was approved in Luxembourg by an Act of 29 August 1953;

- Lastly, national legislation in the civil, administrative and, more especially, criminal fields.

2. Thus, torture and cruel treatment are punishable under the Luxembourg Penal Code by virtue either of a direct reference to torture or of provisions governing wilful infliction of bodily harm. Furthermore the criminal law of Luxembourg precludes all cruel, inhuman or degrading punishment.

3. By an Act of 22 June 1988 the Grand Duchy of Luxembourg approved the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment signed at Strasbourg on 26 November 1987. The European Convention can be considered to be broader in its scope than the United Nations Convention in that it sets out to institute an effective system for the prevention of torture.

4. It should be pointed out that international standards always take precedence in the legal system of Luxembourg over national rules, even those post-dating them. International standards form an integral part of the law and are directly applicable provided their text lends itself to that purpose. Thus, our jurisprudence holds that ordinary international conventions in respect of which an Act of approval has been adopted can have direct effect.

5. By way of example, reference may be made to the following decisions: Court of Cassation, 17 January 1985, No. 2/85, Engel/Engel concerning the European Convention of 1950; Luxembourg Circuit Court, 30 October 1989, No. 832/89, concerning the same Convention and the International Covenant on Civil and Political Rights; Council of State, 21 March 1990, No. 8300 concerning the European Convention of 1950; and Court, 2 May 1985, vol. 26, p. 273, concerning an ILO Convention.

6. The provisions of the United Nations Convention, as of any other international convention, may thus may invoked before judicial courts (dealing with civil, commercial, social or criminal matters) and administrative courts (dealing with acts of the public administration), or before the Administration itself by private individuals, either directly in order to ensure their enjoyment of a right guaranteed under a convention or, exceptionally, in order to prevent an infringement of their rights.

7. Any victim of torture or cruel or inhuman treatment has the right to bring proceedings against the perpetrator of the crime. The victim can lodge a complaint with an officer of the criminal investigation service, who then proceeds to conduct a preliminary enquiry; the officer must inform the State Prosecutor without delay of any violation (crime, offence or infringement of the law) that comes to his knowledge. The victim may also lodge a complaint accompanied by the bringing of criminal indemnification proceedings with an

examining magistrate of one of the circuit courts of the Grand Duchy. In this case the magistrate must immediately open a judicial enquiry and investigate the case within the time-limits prescribed by law.

II. INFORMATION RELATING TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 1

8. This article establishes the scope of the Convention by defining the term "torture". In paragraph 2, the Convention does not preclude the possibility of applying international or national provisions of wider application. This reference to international law is justified by the fact that, in particular, article 5 of the Universal Declaration of Human Rights of 10 December 1948 expressly prohibits cruel or inhuman punishment. Inhuman punishment is likewise prohibited in article 3 of the European Convention. All the above instruments have been ratified by Luxembourg. It should be pointed out that the term "torture" is not defined expressis verbis either in the Constitution of Luxembourg or in the legislative texts.

Article 2

9. This article requires the State to take measures to prevent acts of torture in its territory. Torture and cruel treatment are punishable under the Penal Code of Luxembourg by virtue either of a direct reference to torture or of provisions governing wilful infliction of bodily harm. Thus, article 257 of the Penal Code condemns abuse of authority, i.e. all direct or indirect use of violence against individuals, without legitimate grounds, by a public official or officer. The text of article 257 reads as follows:

> "When a public official or officer, an administrator, agent or representative of the Government or of the police, or a judicial marshal or police commandant or deputy commandant has, without legitimate grounds, used or authorized the use of violence against persons in the exercise of or in connection with the exercise of his duties, the minimum penalty for such acts shall be increased in accordance with article 266."

10. Other cases listed in the Convention are governed by provisions of ordinary law designed to protect physical integrity (wilful infliction of bodily harm). The provisions concerned are, in particular, articles 398 to 401 bis of the Penal Code, which read as follows:

> Article 398. "Anyone wilfully wounding or striking shall be punished by from eight days to six months of imprisonment and a fine of from 2,501 francs to 10,000 francs, or with only one of those penalties.
>
> If the act was premeditated, the offender shall be sentenced to imprisonment for a period of from one month to one year and to a fine of 5,000 francs to 20,000 francs."
>
> Article 399. "If the striking or wounding have caused illness or disability, the offender shall be punished by from two months to two years of imprisonment and a fine of from 5,000 francs to 20,000 francs.

The offender shall be punished by from six months to three years of imprisonment and a fine of from 10,000 francs to 100,000 francs if he acted with premeditation."

Article 400. "If the striking or wounding resulted either in apparently incurable illness or in permanent disability, or loss of absolute use of an organ, or severe mutilation, the penalties shall be imprisonment for from two years to five years and a fine of from 20,000 to 50,000 francs.

If the act was premeditated, the sentence shall be one of imprisonment."

Article 401. "Where blows struck or wounds inflicted wilfully but without intent to kill have nevertheless caused death, the offender shall be punished by imprisonment.

If these acts of violence were premeditated, the penalty shall be a period of 10 to 15 years of hard labour."

Article 401 bis. "Anyone who has wilfully wounded or struck a child below the age of 15, or has wilfully deprived a child of food or care to the point of endangering its health, or who has committed any other act of violence or assault against it with the exception of minor acts of violence, shall be punished by imprisonment of from one to three years and a fine of from 2,501 francs to 25,000 francs.

If any of the acts of violence or privation listed above has resulted in an illness or personal disability, or if the act was premeditated, the penalties shall be imprisonment for three to five years and a fine of from 2,501 to 50,000 francs.

If the offenders are the child's legitimate father and mother, whether natural or adoptive, or other legitimate forebears, or any other person having authority over the child or having it in their care, the penalties in the absence of any ensuing illness, disability or premeditation shall be as set forth in the preceding subparagraph; in the contrary case, a sentence of imprisonment shall be pronounced.

If acts of violence or privation have been followed, either by an apparently incurable illness, or by permanent disability, or by loss of the absolute use of an organ, or by severe mutilation, or have resulted in death without intent to kill, the penalty shall be one of hard labour for a period of 10 to 15 years, and if the offenders are persons referred to in the preceding subparagraph, one of hard labour for life. If the acts of violence or privation were performed with intent to kill, the perpetrators shall be punished as being guilty of murder or attempted murder.

If acts of violence or privation, habitually performed, have led to death, even without intent to kill, the offenders shall receive sentence of death."

11. In other provisions, torture is viewed as an aggravating circumstance in connection with an offence such as, for example, extortion or robbery with violence or with threats (art. 472 of the Penal Code). Article 473 reads as follows:

> "In the cases referred to in articles 468, 469, 470, 471 and 472, the penalty shall be from 15 years to 20 years of hard labour if the acts of violence or threats have caused apparently incurable illness, or permanent disability, or loss of the absolute use of an organ, or severe mutilation.
>
> The same penalty shall be applied if the offender has inflicted physical torture upon a person."

It should be noted that article 473 covers acts of violence and threats as well as other acts of physical torture; its scope is thus the same as that of article 1 of the Convention, which also covers any act by which severe pain or suffering, whether physical or mental, is inflicted.

12. Among the provisions relating to infringements of the liberty of the person committed by individuals, article 438 of the Penal Code condemns physical torture inflicted upon a detained person. The article reads as follows:

> "When the arrested or detained person has been subjected to physical torture, the offender shall be punished with from 10 years to 15 years of hard labour.
>
> If the acts of torture have resulted in an apparently incurable illness, or permanent disability, or loss of the absolute use of an organ, or severe mutilation, the penalty shall be from 15 years to 20 years of hard labour.
>
> If the acts of torture have caused death, the offender shall be sentenced to hard labour for life."

13. Lastly, to complete the picture, mention may be made of the following special Acts:

(a) Article 49 of the Act of 31 December 1982 concerning the review of the Military Penal Code, which reads as follows:

> "Any member of the military forces who strikes a subordinate, unless acting in legitimate self-defence, stemming flight in the face of the enemy, or preventing looting or destruction of property, shall be punished by a term of imprisonment of from two months to three years.
>
> If the blows dealt have caused one of the consequences referred to in articles 399, 400 and 401 of the Penal Code, the penalties imposed shall be those provided for under those articles."

(b) Article 47 of the Royal Decree of 30 January 1815 concerning the mounted constabulary, which reads as follows:

"All members of the mounted constabulary shall be expressly prohibited from inflicting any ill-treatment upon arrested persons, or from employing any act of violence against them, unless there be resistance or rebellion, in which case alone they shall be authorized to resort to force while resisting acts of violence committed against them in the exercise of their duties."

(c) Article 7 of the Act of 16 April 1979 concerning discipline in the police force and article 10 of the Act of 17 July 1973 concerning the use of weapons and other means of constraint by members of the police force. These two articles provide that members of the police force may not carry out an order if so to do would constitute a crime or an offence.

(i) Article 7 of the Act of 16 April 1979 reads as follows:

"Obedience shall be prompt, faithful and conscientious. If, owing to unforeseen circumstances, an order cannot be carried out in a regular manner, the officer required to execute the order shall immediately inform the officer issuing the order. If such information cannot be given and in case of urgent need, the officer must take appropriate steps on his own initiative, being guided by the intentions of the officer issuing the order.

Obedience to an order whose execution constitutes a crime or an offence shall be prohibited. The execution of such an order entails the liability of the officer carrying out the order if he cannot fail to realize that by obeying the order he will become party to a criminally punishable act. Refusal to carry out an order which is incompatible with human dignity or which is unrelated to police duties shall not constitute an act of disobedience. An officer's failure to appreciate the nature of the order shall not constitute an excuse."

(ii) The text of article 10 of the Act of 17 July 1973 reads as follows:

"If a police officer in the exercise of his duties receives from his superior officer an order to employ weapons or any means of coercion, the order shall be carried out, unless it is unrelated to the performance of the former officer's duties.

The order must not be carried out if its execution would constitute a crime or an offence.

If, in that case, the order is nevertheless carried out, the executing officer shall incur liability only if he knew, or could have known in the light of the circumstances, that a crime or offence was manifestly involved.

The executing officer must, if circumstances permit, make known his objections concerning the lawfulness of the order received to the officer issuing the order."

Article 3

14. This article prohibits the expulsion, turning back or extradition of a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or similar ill-treatment. The entry of aliens into Luxembourg and their stay therein are governed by the Act of 28 March 1972 and the Grand Ducal Implementing Regulations of the same date. These instruments set forth the principles concerning residence of all aliens and the obligations with which they must comply. Article 13 of the Act provides that expulsion may be ordered by the Minister of Justice.

15. Article 7 of the Act of 13 March 1870 on the extradition of foreign offenders, as well as article 3 of the European Convention on Extradition of 13 December 1957 approved by the Act of 21 July 1976, preclude extradition in respect of a political offence or of an act connected with such an offence.

(a) Article 7 of the Act of 13 March 1870 reads as follows:

"It shall be expressly stipulated in these treaties that the alien cannot be prosecuted or punished for any political offence committed prior to extradition, or for any act connected with such an offence, or for any crime or offence not provided for by the present act; extradition or provisional arrest in any of the above cases shall be prohibited.

An attempt upon the life of the Head of a foreign Government or members of his family shall not be deemed a political offence if the attempt constitutes an act of murder, assassination or poisoning."

(b) Article 3 of the European Convention on Extradition reads as follows:

"1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.

4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character."

It is reasonable to suppose that, in the majority of cases, inhuman treatment which the Convention condemns is inflicted in connection with offences of this type. Exclusion clauses of the same type are to be found in

the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, approved by the Act of 21 July 1976, or the Benelux Treaty on Extradition and Mutual Assistance in Judicial Matters of 27 June 1962, approved by the Act of 26 February 1965.

Article 4

16. This article deals with the scope and gravity of penalties. Infliction of bodily harm is punished under article 398 of the Penal Code. According to the article, anyone wilfully inflicting wounds or striking blows shall be punished by imprisonment for from eight days to six months and a fine of from 2,501 francs to 10,000 francs, or only one of those penalties. If the act was premeditated, the offender shall be sentenced to from one month to one year imprisonment and to a fine of from 5,000 francs to 20,000 francs.

17. In addition, the subject-matter of the Convention is covered more specifically in article 438 of the Penal Code. This article provides as follows:

> "If the arrested or detained person was subjected to physical torture, the offender shall be punished by hard labour for 10 years to 15 years.
>
> If the torture inflicted has resulted in apparently incurable illness, permanent disability, or loss of the absolute use of an organ, or serious mutilation, the penalty shall be hard labour for 15 years to 20 years.
>
> If the torture inflicted has caused death, the offender shall be sentenced to hard labour for life."

Since such offences are qualified as crimes, attempt and complicity in connection with them are likewise prosecuted in the person of the accomplices and co-perpetrators.

Article 5

18. Under this article the States parties to the Convention are required to take such measures as may be necessary to establish their jurisdiction over the offences covered by the Convention in accordance with the principles of territoriality or of the nationality of the alleged offender or the victim. Each State Party must take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in its territory and it does not extradite him.

19. In connection with paragraph 1 of the article it should be noted that, by virtue of the principle of territoriality in criminal law, the criminal law of Luxembourg applies, in the absence of any formal statement to the contrary, to any Luxembourg or foreign national who is present, for whatever reason, in the territory of the Grand Duchy. Thus, all proceedings under civil or criminal law arising from acts constituting offences committed in the territory of the Grand Duchy fall within the scope of the law of Luxembourg, in accordance of article 3 of the Penal Code which provides that offence committed in the

territory of the Grand Duchy by Luxembourg citizens or by aliens shall be punished in conformity with the provisions of the laws of Luxembourg. Accordingly, the Luxembourg courts have jurisdiction provided that one of the constituent elements of the offence occurred in Luxembourg territory.

The rules governing punishment for offences committed by Luxembourg citizens abroad are set forth in article 5 of the Code of Criminal Investigation, which reads as follows:

> "Any Luxembourg national who has, outside the territory of the Grand Duchy, committed a crime punishable under Luxembourg law, can be prosecuted and tried in the Grand Duchy.
>
> Any national of Luxembourg who has, outside the territory of the Grand Duchy, committed an act qualified as an offence under Luxembourg law can be prosecuted and tried in the Grand Duchy.
>
> However, except in the case of crimes and offences committed in wartime, no proceedings shall be instituted in the case of a crime or an offence if the accused person has been tried for the same offence in a foreign country and has been acquitted.
>
> The same shall apply if, having been tried and convicted, he has served his sentence, or the punishment has been time-barred, or he has been pardoned.
>
> Any period of detention served abroad in consequence of the offence which gives rise to a conviction in the Grand Duchy shall be set against the period of any custodial sentence."

21. In the event of offences committed against a private individual who is a Luxembourg or foreign national, proceedings can be instituted only at the request of the Public Prosecutor; they must be preceded by a complaint brought by the victim or his family, or by an official accusation brought before the Luxembourg authorities by the authorities of the country where the offence was committed, or, if the offence committed abroad was committed in wartime against a national of a country allied with Luxembourg within the meaning of article 117, paragraph 2 of the Penal Code (Grand Ducal Order of 14 July 1943), by the authorities of the country of which the person against whom the offence was committed is or was a national.

22. Similarly, a Luxembourg national who has committed abroad one of the offences provided for in articles 198 (forgery of documents), 199 (use of false names or titles), 379 bis (procuring), 382 (soliciting) and 383 (indecent exposure) of the Penal Code can be prosecuted and judged in the Grand Duchy even if the act is not punishable under the laws of the country in which it was committed and if the Luxembourg authorities have received neither a complaint from the offended party nor an accusation from the authority of the country in which the offence was committed. An alien who is a co-perpetrator or an accomplice to a crime committed by a Luxembourg national outside the territory of the Grand Duchy can be prosecuted in the Grand Duchy together with the Luxembourg national accused of the crime or after his conviction.

Article 6

23. Under this article, the State party in whose territory a person alleged to have committed an offence is present must, if it considers that the circumstances so warrant, take appropriate steps to prevent the perpetrator from escaping prosecution or extradition. Luxembourg complies with this requirement and provides for an immediate preliminary inquiry into the facts.

24. Thus, in accordance with the bilateral and multilateral extradition conventions to which Luxembourg is a party, the person to be extradited can be provisionally arrested on the strength of a court decision. Paragraph 4 of article 16 of the European Convention on Extradition approved by Luxembourg provides that provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition; that period shall not, in any event, exceed 40 days from the date of arrest. Paragraph 3 of article 6 of the United Nations Convention is complied with in Luxembourg except where the person in custody is being held incommunicado under a decision of the examining magistrate.

Article 7

25. This article requires the State in whose territory a person alleged to have committed any offence referred to in article 4 is found either to extradite or to judge him. It is true that criminal prosecution by a State other than that in whose territory the acts of torture were perpetrated will often be hampered by difficulty in obtaining sufficient evidence to convict the perpetrator of the offence upon the conclusion of proceedings during which fair treatment is guaranteed. That is why article 7 contains provisions which specify the standards of evidence required and guarantee fair treatment of the alleged perpetrator of acts of torture at all stages of the proceedings.

26. If the State where the act of torture was committed demands extradition, it may obtain it under the mechanism established in Luxembourg by the Act of 13 March 1870 on the extradition of foreign offenders. Luxembourg courts do not, generally speaking, have jurisdiction over offences committed outside the national territory.

27. With regard to paragraph 2 it should be noted that the standards of evidence required for prosecution and conviction are the same as under paragraph 1 of article 5. In Luxembourg, the alleged perpetrator of the offence enjoys fair treatment at all stages of the proceedings in conformity with paragraph 3 of article 7.

Article 8

28. It should be recalled that Luxembourg is a party to a number of multilateral conventions on extradition, including the European Convention on Extradition of 13 December 1957, referred to above, approved by an Act of 21 July 1976. In addition, Luxembourg has signed bilateral agreements with Australia, the United States, Great Britain, etc. Furthermore, a treaty on extradition and mutual aid in criminal matters, dated 27 June 1962, exists between the Benelux countries. It should be noted that Luxembourg permits extradition even in the absence of express agreement between the two States

concerned. Moreover, since the entry into force of the Act of approval the Convention against Torture can serve as an extradition treaty with States signatories of the Convention.

Article 9

29. Under this article the States parties undertake to afford one another the greatest measure of assistance, in particular as regards the supply of evidence. Legal mutual assistance is possible only in conformity with existing treaties. Luxembourg forms part of an extensive network of legal mutual assistance in criminal matters; thus, Luxembourg has ratified the European Convention on Mutual Assistance in Criminal Matters signed on 20 April 1959 and approved by an Act of 21 July 1976. Reference may also be made in this context to the above-mentioned treaty on extradition and mutual legal assistance between the Benelux countries.

30. Furthermore, articles 58 and 59 of the amended Act of 7 March 1980 on the organization of the legal system set forth the conditions for the sending of letters of request for the purpose of evidence being taken. Thus, Luxembourg judges can address letters of request even to foreign judges unless another method of transmission has been agreed with the country of destination. Except in connection with obligations resulting from international treaties, judges may comply with letters of request emanating from foreign judges only if they are authorized so to do by the Minister of Justice, in which case compliance is mandatory.

Article 10

31. Under this article, States are required to include education and information regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the training of all persons, civil or military, who may be involved in dealing with persons deprived of their liberty.

32. The amended Luxembourg Constitution of 17 October 1868 provides in its article 11 that the State shall guarantee the natural rights of the individual and of the family. Furthermore, no one shall be prosecuted otherwise than in cases and according to the procedure laid down by the law (art. 12, para. 2). Torture or cruel and inhuman treatment practised by State officials or police officers are subject to increased penalties under article 257 of the Penal Code, which reads as follows:

> "When a public official or officer, an administrator, agent or representative of the Government or of the police, or a judicial marshal or police commandant or deputy commandant has, without legitimate grounds, used or authorized the use of violence against persons in the exercise of or in connection with the exercise of his duties, the minimum penalty for such act shall be increased in accordance with article 266."

Thus, the minimum penalty is doubled in the case of imprisonment and increased by two years in the case of rigorous imprisonment, detention or hard labour.

33. In Luxembourg, the fundamental principles of democracy and respect of human rights are taught and have to be observed at all levels of society, including schools, universities, vocational establisments and, in particular, the army and other policing bodies.

Article 11

34. Officers of the criminal investigation service may summon and interrogate any person likely to be able to give information concerning crimes, offences or infringements known to them. The persons thus summoned are obliged to appear. If they fail to do so, the State Procurator may use the forces of law and order to compel them to appear (art. 38 of the Code of Pre-Trial Proceedings).

35. If the interests of the investigation so require, persons against whom there are serious and concordant indications such as may constitute grounds for bringing a charge can, with the authorization of the State Procurator, be detained by an officer of the criminal investigation service for a period not exceeding 24 hours. The period of 24 hours starts when the person is actually detained by the police. Unless the interests of the investigation militate against it, the detained person may send a message to an individual of his or her choice. The State Procurator can order the necessary identification procedures, and in particular the taking of fingerprints and photographs of the detained person. If the detained person is suspected of concealing objects that may be useful in ascertaining the truth or objects that may be dangerous to themselves or others, a body search may be performed by a person of the same sex. The State Prosecutor can at any moment, ex officio or at the request of the detained person or of a member of their family, designate a physician to examine the detained person. Before proceeding to the interrogation, the officers and agents of the criminal investigation service must inform the person to be interrogated of their right to be assisted by counsel chosen from among the appropriate panel of lawyers. The records shall indicate the duration of the interrogations to which the detained person was subjected and of the rest periods between those interrogations, the date and time at which he or she was detained and the day and time from which he or she was either released or brought before the examining magistrate (art. 39 of the Code of Pre-Trial Proceedings).

Article 12

36. In Luxembourg, an investigation is ordered ex officio by the Public Prosecutor's Office in the event of an allegation of beating or ill-treatment by police officers or agents.

Article 13

37. Luxembourg legislation provides that all officers of the criminal investigation service, including even investigating magistrates, shall be subject to supervision by the Procurator General (art. 279, para. 1 of the Code of Pre-Trial Proceedings). In the event of negligence, for example, the Procurator General will issue a warning which will be recorded by him in a register kept for that purpose (art. 280). In the event of a recurrence, the Procurator General will report the officers concerned to the court, which will summon them to appear before a judge in chambers (art. 281, para. 1 of the Code of Pre-Trial Proceedings).

Article 14

38. Under this article the State must ensure that the victim of an act of torture has the right to obtain redress and to receive fair and adequate compensation. Thus, the victim of such an offence will have a right to fair compensation for the material and moral prejudice suffered. The compensation will include medical and hospitalization expenses, loss of earnings or pension, the pretium doloris, rehabilitation costs, etc. In the event of the death of the victim, his dependents shall be entitled to compensation for the material and moral prejudice caused by their loss. Such compensation shall endeavour to place the injured party in the situation that would have obtained on the day on which redress was ordered had the offence not been committed.

Article 15

39. It is a principle of case law, firmly established in Luxembourg courts, that judges cannot consider any evidence obtained by wrongful or unfair methods. This principle is illustrated, in particular, by a Court decision of 26 June 1972 (Pasicrisie, 22.216). The decision reads as follows:

> "Whereas it is a matter of principle that judges may not consider evidence obtained by wrongful or unfair means;
>
> More especially, whereas, if it is demonstrated that a letter produced before the court was obtained in an irregular manner, that letter must be deleted from the record together with anything consequent upon it; ..."

Article 16

40. This article supplements article 1 in that it condemns acts similar to those covered by the Convention.